

United States Court of Appeals for the Tenth Circuit

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Patrick J. Fisher, Jr.  
Clerk of Court

March 8, 2001

Mr. Robert M. March  
Clerk  
United States District Court for the District of New Mexico  
333 Lomas NW, Suite 270  
Albuquerque, NM 87102-2242

UNITED STATES DISTRICT COURT  
ALBUQUERQUE, NEW MEXICO

MAR 12 2001

Re: 00-2233, Bailey v. Romero  
Dist/Ag docket: CIV-00-242

Dear Mr. March:

Enclosed for the clerk of the trial court or the named agency, is a certified copy of the order and judgment filed in this case which is issued as the mandate of this court. See Fed. R. App. P. 41(a). Please file it in the records of your court or agency.

Please acknowledge receipt of this mandate by file stamping and returning the enclosed copy of this letter. Any original record will be returned to you at a later date.

Please contact this office if you have questions.

Sincerely,

PATRICK FISHER  
Clerk

By: *Audrey H. Hoge*  
Deputy Clerk

PF:afw  
Enclosure

cc: Donald-Blaine Bailey  
John H. Clough  
Patricia A. Madrid

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**FILED**  
United States Court of Appeals  
Tenth Circuit

**UNITED STATES COURT OF APPEALS**

**FEB 14 2001**

**TENTH CIRCUIT**

**PATRICK FISHER**  
Clerk

DONALD-BLAINE: BAILEY,

Plaintiff-Appellant,

v.

JEFF ROMERO, Second Judicial  
District Attorney; IRMA PLUEMER,  
Assistant District Attorney; RONALD  
GRENKO, New Mexico Bar licensed  
attorney; PATRICIA A. MADRID,  
New Mexico Attorney General, all  
officially and individually,

Defendants-Appellees.

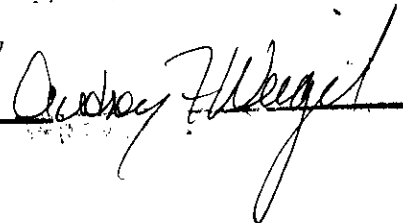
No. 00-2233

(D.C. No. CIV-00-242)  
(D.N.M.)

A true copy

File

Patrick Fisher  
Clerk of  
Tenth Circuit

By 

**ORDER AND JUDGMENT\***

Before **HENRY, BRISCOE** and **MURPHY**, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is

\*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

therefore ordered submitted without oral argument.

Plaintiff Donald-Blaine: Bailey, appearing pro se and proceeding in forma pauperis, appeals the district court's dismissal of his action. We dismiss the appeal as moot.

Plaintiff commenced his action in federal district court by filing an "Emergency Request for Hearing; Temporary Restraining Order; and Declaratory Judgment." Plaintiff sought a temporary restraining order against the district attorney's office to stay proceedings in his state criminal case until it was finally determined whether he was a United States citizen, and if he was found not to be a United States citizen, "whether or not [plaintiff] is still amenable to procedural due process as is mandated by the Fourteenth Amendment." Record, Doc. 1 at 19. Defendants filed a motion to dismiss based on immunity and failure to state a claim. Defendants also raised a comity argument by asserting the court should not exercise its jurisdiction given the pendency of the state court criminal action. The district court granted defendants' motion to dismiss.

Defendants filed a suggestion of mootness with this court on November 6, 2000. Attached to the pleading is a copy of the state district court's order of August 1, 2000, dismissing the state criminal action because plaintiff was found incompetent to stand trial.

We agree with defendants' suggestion and dismiss this appeal as moot. See

F.E.R. v. Valdez, 58 F.3d 1530, 1533 (10th Cir. 1995) (dismissing claim as moot because the explicit objective of the proposed injunction had been met).

The appeal is DISMISSED.

Entered for the Court

Mary Beck Briscoe  
Circuit Judge